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OFFICE OF PETITIONS

In re Application of :
Louis Henry Martin Jandrell :
Application No. 10/659,903 : ON PETITION
Filed: September 11, 2003 :
Attorney Docket No.: 068796.0118 :

This is a decision on the petition filed January 21, 2004, titled "Petition Regarding Omitted Items in a Non-provisional Application." Petitioner is advised that the petition will be treated as request to vacate the language that speaks to omitted items in the "Notice to File Corrected Application Papers" mailed December 2, 2003, in the above-cited application.

The petition is **dismissed**.

On September 11, 2003, the above-identified application was filed. However, on December 2, 2003, the Office of Initial Patent Examination mailed a "Notice to File Corrected Application Papers," stating that application had been accorded a filing date of September 11, 2003, and advising applicant that Figures 7, 10, and 13c described in the specification appeared to have been omitted and that replacement drawings were required.

In response, on January 21, 2004, applicant filed the present petition and a \$130.00 petition fee. Applicant explains that Figures 7, 10, and 13c were not missing on September 11, 2003. Applicant further explains that the labels for Figures 7, 10, and 13c were inadvertently omitted when submitted with the application papers. The petition is accompanied by copies of pages 3, 7, and 16 of the drawings that contain Figures 7, 10, and 13c, respectively. Applicant further argues that the instant application incorporated by reference a prior application that contains a complete copy of the drawings, therefore; the instant application was complete on filing.

The Notice permits applicant to either: (1) promptly establish prior receipt in the Office of the items at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted items and accept the date of such submission as the application filing date. An applicant asserting that the missing items were in fact deposited in the Office with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted items in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted items with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such omitted items and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).

Petitioner does assert that application filed September 11, 2003, included figures 7, 10, and 13c, but concedes that the figures were not labeled. Petitioner maintains, however, that the transmittal sheet that accompanied the application identified the above-cited application as a divisional application of

application number 09/908,011 and specifically incorporated by reference the entire disclosure of the prior application.

An applicant may incorporate by reference the prior application by including in the application-as-filed, a statement that such specifically enumerated prior application or applications are hereby incorporated by reference. The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the divisional application to include any subject matter in such prior application(s), without the need for a petition. See MPEP 201.06(c).

In view of the incorporation by reference of the prior application, Figures 7, 10, and 13c are not new matter if they were a part of the disclosure of the prior application.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 11, 2003.

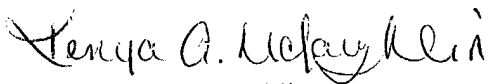
Thereafter, the application will be forwarded to the appropriate group art unit for consideration by the examiner of the petition filed January 21, 2004, as a supplemental preliminary amendment requesting entry of Figures 7, 10, and 13c the specification.

A preliminary amendment adding the labels for Figures 7, 10, and 13e to the unlabeled figures should be filed prior to the first action on the merits.

The replacement drawings filed January 21, 2004, are noted and made of record.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 11, 2003 using the sixteen (16) sheets of drawings filed on that date.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0010.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions